



Exempt Action Final Regulation Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	Part I, 9VAC5-80 (Permits for Stationary Sources)
Secondary action(s)	Articles 1, 3, 5, 6, 7, 8, and 9 of Part II of 9VAC5-80 (Permits for Stationary Sources); 9VAC5-170 (Regulation for General Administration)
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Permit Actions Before the Board (Rev. G08)
Date this document prepared	November 4, 2008

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006(A) of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99)

Summary

Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment.

Summary of Existing Regulations

The regulations governing the permit program for stationary sources are located in Chapter 80 of the Regulations for the Control and Abatement of Air Pollution. As described below, there are two types of permits affected by this program: operating permits, and new source review permits.

Federal Operating Permit (Title V) Program (Articles 1 and 3) covers major regulated industrial/commercial facilities and requires that a permit be obtained to operate the facility. Permits issued under this program must be renewable and set out standards and conditions that cover all the applicable requirements of the Clean Air Act for each emissions unit at each individual stationary source.

State Operating Permit Program (Article 5) covers any individual stationary source and is used primarily as source specific regulatory mechanism to implement air quality requirements, among other uses. Owners are not required to obtain this permit but may do so under very specific conditions.

New Source Review Programs cover new facilities and modifications (physical or operational changes) to existing ones and require a permit be obtained prior to beginning construction of the new facility or the modification of the existing one. There are four permit programs and applicability depends on the type, size and location of the source. The first (Article 8), prevention of significant deterioration (PSD), applies to major sources and major modifications locating in areas in which the air quality meets or is better than the air quality standards. The second (Article 9), nonattainment, applies to major sources and major modifications locating in areas in which the air quality does not meet the air quality standards (nonattainment). The third (Article 7), hazardous air pollutants (HAPs), applies to major sources in order to implement the requirements of § 112(g) of the Clean Air Act. The fourth (Article 6) covers sources not covered by the other three.

Chapter 170, Regulation for General Administration, is not a specific permitting program. Rather, it contains general provisions for certain activities relevant to the air pollution control program as a whole, including, but not limited to: enforcement of regulations, permits and orders; considerations for approval actions; delegation of authority; and appeal of board actions.

Summary of Amendments

Chapter 276, 2008 Acts of Assembly, created § 10.1-1322.01, Permits; procedures for public hearings and permits before the board. It allows for additional opportunity for public comment and board review of permitting actions.

9VAC5-80, Part I

The new procedures set forth in §10.1-1322.01 have been placed into Part I of Chapter 80. The new legislation addresses two issues: (i) where there is only a public comment period prior to the permit decision, and (ii) where there is a federal or state mandate to hold a hearing prior to the permitting decision. Both of these issues are addressed in a single narrative in §10.1-1322.01. In order to ensure clear and consistent implementation, this provision has been split into separate sections: 9VAC5-80-25 and 9VAC5-80-35.

In the air permit program, a public hearing is required by either federal or state regulation for all major and certain minor new source review permits. On the other hand, operating permits have no mandate for a hearing; however, there is the opportunity to request one during the public comment period.

9VAC5-80, Part II

In each of the articles in Chapter 80 that cover the various permit programs, provisions are included from the law that tell the public what to do to request a hearing or board consideration, with a cross-reference to the appropriate provisions of Part I. The articles affected are those discussed in the summary of existing regulations above.

9VAC5-170

Chapter 170 has been revised to remove provisions related to board involvement in permitting decisions, which are now covered in Chapter 80 as appropriate to meet the requirements of the new legislation.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On October 23, 2008, the State Air Pollution Control Board took final action to adopt amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution," specifically, Permits for Stationary Sources (9VAC5-80) and "Regulation for General Administration" (9VAC5-170). The regulatory action is to be effective as provided in the Administrative Process Act.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 a of the Administrative Process Act because they are necessary to conform to Virginia statutory law.

In adopting these amendments, the board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

Additional Information

Please indicate that the text of the regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.

Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the regulation and that it comports with applicable state and/or federal law.

If the exemption claimed falls under § 2.2-4006 A 4 c of the APA please identify the federal law or regulations being relied upon for the final agency action.

The text of the regulation is attached.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Letters providing written assurance from the Office of the Attorney General that (i) the board has statutory authority to promulgate the final regulation amendments and (ii) the amendments qualify as an exemption under § 2.2-4006 A 4 a of the Administrative Process Act are available upon request.

Family Impact

Assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

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